

RESOLUTION 2018-085
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ACCEPTING ADVISORY OPINION NO. 2018-01 OF THE ETHICS REVIEW BOARD

WHEREAS, the City Council has established an Ethics Review Board (the "Board") consisting of designated members of the City Council; and

WHEREAS, the Board is empowered under Section 2-569 of the City Code to render advisory opinions and recommendations regarding actual or hypothetical situations of Councilmembers or board and commission members of the City; and

WHEREAS, the Ethics Review Board met on July 25, 2018, and August 28, 2018, to review and approve the draft Ethics Opinion 2018-01, responding to an inquiry by Councilmember Overbeck requesting that the Board consider whether Councilmembers have conflicts of interest in matters involving: (1) outside bodies they have been appointed to represent the City on; or (2) organizations to which they have donated funds (pursuant to a request under "Other Business" at the Council meeting on February 20, 2018); and

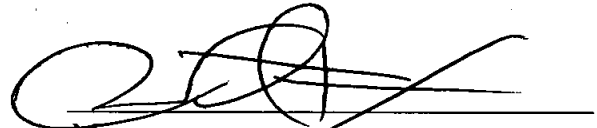
WHEREAS, the Board has issued Ethics Opinion 2018-01, concluding that:

- (1) City Code Section 2-570(b) provides clear guidance regarding the question of whether service on an outside board as an appointee of the City Council raises a conflict of interest, and no further explanation or formal guidance is required, and
- (2) while no definite general determination may be made regarding whether donations by a councilmember give rise to a conflict of interest for that councilmember in a City Council decision of interest to the donee organization, except in the case of a sizable or very particularly purposed donations, it is unlikely a conflict will arise, although each circumstance must be evaluated based on the specific facts and circumstances involved, applying the definitions of "financial interest" and "personal interest" as set forth in the City Charter and City Code, as noted in that Opinion; and

WHEREAS, the City Council has reviewed the opinion of the Board and wishes to adopt the same.

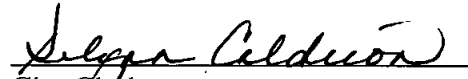
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that Opinion No. 2018-01 of the Ethics Review Board, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, has been submitted to and reviewed by the City Council, and the Council hereby adopts the opinion contained therein.

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins this 4th day of September, A.D. 2018.



Mayor

ATTEST:



City Clerk



2018 -01
OPINION OF THE ETHICS REVIEW BOARD
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS

August 28, 2018

The City Council Ethics Review Board (the "Board") met on July 25, 2018, to render an advisory opinion on a question submitted to the Board by Councilmember Bob Overbeck under "Other Business" at the Council meeting on February 20, 2018. The question presented is whether City Councilmembers have conflicts of interest in matters involving: 1) outside bodies they have been appointed to represent the City on; or 2) organizations to which they have donated funds.

Background.

This inquiry relates whether councilmember involvement in outside entities, either as a Council-appointed representative of the City or as a contributor in a personal capacity, gives rise to a conflict of interest under the City Charter and City Code. The question arose in the context of Council consideration of an item directly affecting the Poudre Heritage Alliance, the Board of which Councilmember Overbeck serves on by virtue of his appointment to that position in City Council Resolution 2017-049.

Under City Code Section 2-569, councilmembers may present to the Council Ethics Review Board inquiries regarding the application of state or local ethical rules to actual or hypothetical situations involving potential conflicts of interest. Upon completion of its review, the Ethics Review Board adopts an Ethics Opinion that is then presented to the City Council for consideration and possible adoption by the Council by resolution.

Article IV, Section 9(b) of the City Charter states as follows (*emphasis added*):

...

(b) Rules of conduct concerning conflicts of interest.

For the purpose of interpreting and applying these provisions, a *financial interest* is defined as follows:

9) *Financial interest* shall have the meaning given to this term in Section 9(a) of Charter Article IV, which states:

Financial interest means any interest equated with money or its equivalent. Financial interest shall not include:

a. the interest that an officer, employee or relative has as an employee of a business, or as a holder of an ownership interest in such business, in a decision of any public body, when the decision financially benefits or otherwise affects such business but entails no foreseeable, measurable financial benefit to the officer, employee or relative;

- b. the interest that an officer, employee or relative has as a nonsalaried officer or member of a nonprofit corporation or association or of an educational, religious, charitable, fraternal or civic organization in the holdings of such corporation, association or organization;
- c. the interest that an officer, employee or relative has as a recipient of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens, regardless of whether such recipient is an officer, employee or relative;
- d. the interest that an officer, employee or relative has as a recipient of a commercially reasonable loan made in the ordinary course of business by a lending institution, in such lending institution;
- e. the interest that an officer, employee or relative has as a shareholder in a mutual or common investment fund in the holdings of such fund unless the shareholder actively participates in the management of such fund;
- f. the interest that an officer, employee or relative has as a policyholder in an insurance company, a depositor in a duly established savings association or bank, or a similar interest-holder, unless the discretionary act of such person, as an officer or employee, could immediately, definitely and measurably affect the value of such policy, deposit or similar interest;
- g. the interest that an officer, employee or relative has as an owner of government-issued securities unless the discretionary act of such owner, as an officer or employee, could immediately, definitely and measurably affect the value of such securities; or
- h. the interest that an officer or employee has in the compensation received from the city for personal services provided to the city as an officer or employee.

For the purpose of interpreting and applying these provisions, *personal interest* is defined as follows:

(11) *Personal interest* shall have the meaning given to this term in Section 9(a) of the Charter Article IV, which states:

Personal interest means any interest (other than a financial interest) by reason of which an officer or employee, or a relative of such officer or employee, would, in the judgment of a reasonably prudent person, realize or experience some direct and substantial benefit or detriment different in kind from that experienced by the general public. Personal interest shall not include:

- a. the interest that an officer, employee or relative has as a member of a board, commission, committee, or authority of another governmental entity or of a nonprofit corporation or association or of an educational, religious, charitable, fraternal, or civic organization;

- b. the interest that an officer, employee or relative has in the receipt of public services when such services are generally provided by the city on the same terms and conditions to all similarly situated citizens; or
- c. the interest that an officer or employee has in the compensation, benefits, or terms and conditions of his or her employment with the city.

Four ethics opinions from prior Ethics Review Board reviews of the “personal interest” test applying the currently applicable provision are attached for reference and consideration by the Board in evaluating the question posed regarding organizations to which a councilmember has made a donation.

Councilmembers Serving in Council-Appointed Role on a Separate Board

On the first question as to whether councilmember involvement in outside entities as a Council-appointed representative of the City, gives rise to a conflict of interest under the City Charter and City Code., the City Code provides specific guidance:

Sec. 2-570. - City Councilmember appointments.

- (a) Definitions. The following words, for the purpose of this Section, shall have the following definitions:
 - (1) Governmental agency shall mean a federal, state or county government or any incorporated City or town, and every kind of district, agency, instrumentality or political subdivision thereof which has been organized pursuant to law.
 - (2) Private agency shall mean any committee, association, corporation, partnership or other organization or group of persons other than a governmental entity or agency.
- (b) Appointments to governmental or private agencies. The City Council may, in its discretion, appoint any number of its own members, or may authorize members of its boards or commissions, to serve as City representatives to, or members of the boards of directors of, other governmental or private agencies. Absent extraordinary circumstances, which may be reviewed on a case-by-case basis, such appointments shall not be considered to create conflicts of interest for the members of the City Council or the members of City boards and commissions who are so appointed. Accordingly, such City Councilmembers or board and commission members shall not generally be required to refrain from participating in any administrative, legislative, fiscal, investigative or quasi-judicial functions of the City, which may affect the interests of such governmental or private agencies. In the event that individual City Councilmembers or board and commission members may, from time to time, determine, on a case-by-case basis, that a particular circumstance does create a conflict of interest under the then current provisions of law, such City Councilmembers or board or commission members may, in their discretion, choose to abstain from any such

decision. The service of City Councilmembers or board or commission members with other governmental or private agencies shall not be considered service in an official capacity on behalf of the City unless such service has been determined by the City Council by ordinance or resolution to be in the best interests of the City. (*emphasis added*)

Organizations to Which Councilmembers Donate

The second question reviewed by the Board is whether councilmember involvement in outside entities as a contributor in a personal capacity, gives rise to a conflict of interest under the City Charter and City Code in connection with a Council decision of interest to the donee organization (the organization that received the donation). The analysis of this question will focus on whether the councilmember, in light of his or her donor relationship with a particular entity, has either a financial interest or a personal interest in a decision, as those terms are defined in the City Charter and City Code.

The determination as to whether a conflict of interest is present is a fact-specific determination that is not susceptible to definite generalized response. The range of possible circumstances is broad and varied, and the key to analyzing any particular set of facts is applying the definitions of "financial interest" and "personal interest" from the City Charter and City Code, as set out above.

The crux of determining whether a conflict of interest is present will most often be the size and nature of the donation and how directly it relates to a decision that might come before the City Council. So, for example, a general donation to a nonprofit organization is unlikely to be closely enough related to a particular Council decision to give rise to a conflict of interest. Most donations by definition are not tied to financial gain for the donor, and therefore it is unlikely a common donation would or could give rise to a financial interest, as defined above. In addition, because a common donation is unlikely to create a situation in which a Council decision would result in a "direct and substantial benefit or detriment different in kind from the general public."

However, a donation that is substantial in size and has a close relationship to a decision the Council might create a situation in which the donating councilmember has a personal interest in the Council decision. For example, if a councilmember donated \$100,000 to the Poudre Heritage Alliance for the construction of an amphitheater to be named after the councilmember, consideration of a land use appeal regarding the approval of the amphitheater project would likely give rise to a personal interest for that councilmember. Under those facts, the councilmember would reasonably experience a direct and substantial detriment or benefit different in kind than the general public. Similarly, other specific circumstances in which a major donation of particular interest to a councilmember is directly tied to a particular Council decision could lead to a conflict of interest for that councilmember.

Board Conclusions and Recommendations:

1. **Councilmembers Serving in Council-Appointed Role on a Separate Board:**

The Board finds that City Code Section 2-570(b) provides clear guidance regarding the question of whether service on an outside board as an appointee of the City Council raises a conflict of interest, and no further explanation or formal guidance is required.

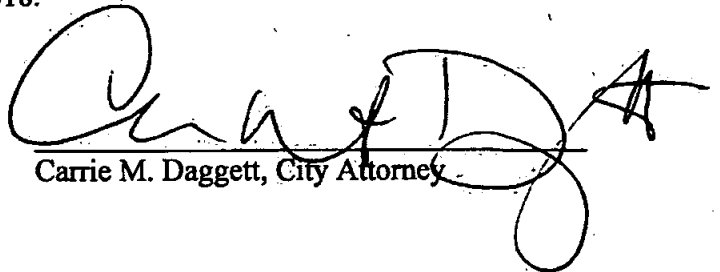
In the event Section 2-570(b) is under review in the future, the Board encourages staff and the Council to consider whether language refinements would avoid any confusion about the meaning of the term "except in extenuating circumstances."

2. **Organizations to Which Councilmembers Donate**

The Board finds that, while no definite general determination may be made regarding whether donations by a councilmember give rise to a conflict of interest for that councilmember in a City Council decision of interest to the donee organization, except in the case of sizable or very particularly purposed donations, it is unlikely a conflict will arise. There may be instances in which a donation is directly tied to a particular activity or purpose and that the City Council will consider a decision bearing directly on the intended outcome. In those instances, the potential for a conflict of interest for the donating councilmember will be much higher. However, each circumstance must be evaluated based on the specific facts and circumstances involved, applying the definitions of "financial interest" and "personal interest" as set forth in the City Charter and City Code, as noted above.

This advisory opinion was reviewed and approved by Councilmembers Ray Martinez, Kristin Stephens, and Ken Summers, as the designated regular members of the Ethics Review Board, at a meeting of the Ethics Review Board on August 28, 2018. Pursuant to Section 2-569(e) of the City Code, this opinion and recommendation is to be immediately filed with the City Clerk and made available for public inspection. Additionally, this opinion shall be considered by the City Council at its regular meeting on September 4, 2018.

Dated this 28th day of August, 2018.



Carrie M. Daggett, City Attorney